

### **Remarks**

Reconsideration of the application is respectfully requested in view of the foregoing amendments and following remarks. Upon entry of this amendment, claims 3-7, and 13-21 remain in the application.

### ***Formal Request For Interview***

Upon reviewing this response, if any issues remain, the Examiner is formally requested to contact the undersigned prior to issuance of the next Office Action in order to arrange a telephonic interview. It is believed that a brief discussion of the merits of the present application may expedite prosecution. Applicants submit the foregoing formal Response so that the Examiner may fully evaluate Applicants' position, thereby enabling the interview to be more focused. This request is being submitted under MPEP § 713.01, which indicates that an interview may be arranged in advance by a written request.

### ***Patentability Over Herz, Yoshinobu, Alexander, Lazarus, and Daniels***

The Office asserts a novelty rejection of claim 13 over Herz, U.S. Patent No. 5,758,257 ("Herz"). The Office asserts an obvious rejection of claims 6, 4, 5, 20, and 21 over Herz in view of Yoshinobu, U.S. Patent No. 5,734,444 ("Yoshinobu") and further in view of Alexander, U.S. Patent No. 6,177,931 ("Alexander"). The Office asserts a rejection of claim 3 as obvious over Herz and Yoshinobu, in view of Alexander and Hendricks, U.S. Patent No. 5,600,364 ("Hendricks"). The Office asserts a rejection of claims 7, and 14-18 as obvious over Herz and Yoshinobu, in view of Alexander, and in further view of Lazarus, U.S. Patent No. 5,652,613 ("Lazarus"). The Office asserts a rejection of claim 19 as obvious over Herz, Yoshinobu, and Alexander, in view of Lazarus, and further in view of Daniels, U.S. Patent Publication No. 2002/0032907 ("Daniels"). Applicants respectfully traverse.

### ***Claim 6***

Claim 6, as amended, recites as follows:

A method of operating a video system, the system including a video input, a controller, and a store, the method comprising:  
monitoring a user's viewing habits to determine a favorite broadcast video program;

copying the video program to the store if the user is not viewing said program when broadcast wherein the user need not plan in advance to record a favorite program, because the favorite program is automatically recorded if it is not viewed by the user when broadcast;  
defining plural viewing channels;  
on certain of said channels, presenting television programs for viewing;  
on at least one of said channels, presenting said copied video program for viewing;  
generating profiles for plural users, said profiles comprising user viewing habits and at least two other user habits comprising a game habit, a chat habit, zip code, an interactive news habit, or a jukebox habit; and  
suggesting a specific program to a viewer, based upon similar preferences determined from said profiles.

Applicants respectfully assert that the proposed Herz-Yoshinobu combination fails to teach or suggest “generating profiles for plural users, said profiles comprising user viewing habits and at least two other user habits comprising a game habit, a chat habit, zip code, an interactive news habit, or a jukebox habit;” See e.g., Application, at page 16, lines 3-15 and lines 20-22.

The Office Action indicates at page 8, paragraph 3, and at page 5 paragraph 2, that the following language in Herz may describe the above amended claim language:

“[T]he customer profiles represent the customer’s preferences for the program characteristics and preferably differ in accordance with the time of day to account for different moods of the customer and different customers within each household.” Herz, col. 25, lines 7-13.

...

“Another way to make adjustments to the customer’s combined ratings is through the clustering of customers. Customer’s are asked to give ratings for various programs. If a group of customer’s come up with very similar ratings for most of the programs in a category, it is assumed that the actual acceptance ranges for these customers for each characteristic relevant to the category forms a narrow distribution, i.e., their values are close to each other.” Herz, col. 15, lines 22-29.

...

“[T]he present invention also may be used to selectively provide other materials such as news, video games, software, music, books and the like to customers based on profiles of those customers. The present invention also may be modified for use in an interactive system to anticipate what customers are likely to request so that the information may be downloaded an advance using, for example a

simple Markov model and/or probability transition matrices in an event graph.” Herz, col. 47, lines 22-30.

Applicants respectfully assert that the language quoted above fails to teach or suggest “generating profiles for plural users, said profiles comprising user viewing habits and at least two other user habits comprising a game habit, a chat habit, zip code, an interactive news habit, or a jukebox habit.” See e.g., Application, at page 16, lines 3-15 and lines 20-22.

For at least this reason, amended claim 6 is allowable. Such action is respectfully requested.

***Claims 3, 21-21***

Claims 3, 20, and 21 depend from claim 6. Since they depend from an allowable claim, they should be allowed for at least the reasons stated for claim 6. In view of the foregoing discussion of claim 6, the merits of the separate patentability of dependent claims 3, 20, and 21 are not belabored at this time. Claims 3, 20, and 21 should be allowable. Such action is respectfully requested.

***Claim 7***

Applicants respectfully assert that the Office has failed to carry the burden of establishing obviousness of claim 7, because the asserted Herz-Yoshinobu-Alexander-Lazarus combination fails to teach or suggest “on certain of said channels, presenting television programs for viewing; on a designated channel, presenting said copied video program for viewing.”

For example, the Office directs Applicants to the following language of Alexander:

Program schedule information for a plurality of channels is displayed on a screen for the EPG in Grid Guide mode. Col. 15, Lines 47-48.

The order in which the channel slots presented are presented can be customized to present the viewer’s favorite channels at the top/beginning of the Grid Guide in descending order according to the Viewer’s Profile. Col. 30, lines 55-58.

Shows added to the Record/Watch Schedule may be set to be viewed: once, daily, or weekly. Col. 21, lines 50-54.

The virtual channel ad slots act like a channel entry in the Grid Guide in that the viewer can record, watch, schedule for watching, and/or get information about the advertised program in the

information detail box of the Grid Guide. Col. 22, lines 29-33.  
Also see FIG. 6.

Applicants respectfully submit that the above passages in Alexander fail to teach or suggest the recited arrangement. For example, Alexander describes an electronic programming guide which can be used to add programs to a watch/record schedule when those programs were originally advertised within a specific ad pane—the “Panel Ad Window.” This panel ad window lists the programs that are to be recorded, and how often the recording is to take place. (See FIG. 6). They neither “present[] said copied video program for viewing,” nor do they give any indication of “a designated channel” that one might use to play the copied video program. Moreover, the “virtual channel ad slots” described in Alexander are a form of advertising “used to provide multiple exposures of a particular program in the guide” [Alexander, col. 22, lines 28-29], and not, for example, “a designated channel” which can be used to view a favorite, automatically copied program.

The Examiner gives as the reason to combine Alexander with Herz and Yoshinobu as being “for the benefit of minimizing channel surfing.” [Action, p. 13.] However, each virtual ad has associated with it 9 virtual channel slots into which a recorded program may be placed. [See Alexander, col. 20, lines 54-56.] Rather than minimizing channel surfing, combining the references will increase, not decrease, the number of channels that a user must surf through.

To establish obviousness, the recited combination must teach or suggest each and every element of the recited claim language. In any event, Alexander, specifically, and the combination, more generally, fails to teach or suggest “on certain of said channels, presenting television programs for viewing; on a designated channel, presenting said copied video program for viewing.”

As such, Applicants respectfully assert that the final action is improper, and request the allowance of claim 7.

### ***Claim 13***

Applicants respectfully submit the claims in their present form are allowable over the cited art. For a 102(b) rejection to be proper, the cited art must show each and every element as set forth in a claim. (See, MPEP § 2131.01) However, the cited art fails to do so.

Claim 13 recites as follows:

A method of operating a computer implemented interactive entertainment system comprising:  
    logging entertainment selections of plural users;  
    generating affinity groupings based on at least two of: similarities in the movie selections logged, tv selections logged, games played, chat habits, zip code, interactive news habits, or jukebox habits;  
    logging entertainment selections of a first user to create a first user profile;  
    determining an affinity grouping similar to the first user's first user profile; and  
    presenting the first user a listing of available programs favored by members of the determined affinity grouping;  
    wherein upon returning to an interactive entertainment channel, the system automatically cycles through plural selections in the determined affinity grouping.

Applicants respectfully assert that Herz fails to teach or suggest the amended language of claim 13 "generating affinity groupings based on at least two of: similarities in the movie selections logged, tv selections logged, games played, chat habits, zip code, interactive news habits, or jukebox habits."

For at least this reason, the rejection is improper, and claim 13 is allowable. Such action is respectfully requested.

***Claim 4, 5***

Amended claims 4 and 5 depend from claim 13. Since they depend from claim 13, they should be allowed, at least, for at least the reasons stated for claim 13. In view of the foregoing discussion of claim 13, the merits of the separate patentability of dependent claims 4-5 are not further belabored at this time. Claims 4 and 5 should be allowable. Such action is respectfully requested.

***Claim 14***

Claim 14 reads as follows:

A computer readable medium including executable instructions that cause a digital processor to perform a method, the executable instructions comprising:  
    instructions for monitoring a user's viewing habits to determine a favorite video program;  
    instructions for copying the favorite video program to memory if the user is not viewing said program when broadcast wherein the user need not plan in advance to record a favorite program, because the favorite program is automatically recorded if it is not viewed by the user when broadcast;  
    instructions for defining plural viewing channels;

instructions for overwriting copied video programs in a following priority, first overwrite viewed copied video programs, then overwrite non-viewed copied video programs; and  
executable instructions permitting a viewer to take a break from broadcast programming comprising:  
instructions for receiving a delay program selection; and  
instructions for routing broadcast programming to memory upon receiving the delay program selection.

With reference to claim 14, the Examiner has stated that Herz, Yoshinobu, and Alexander fail to disclose “instructions for overwriting copied video programs in a following priority, first overwrite viewed copied video programs, then overwrite non-viewed copied video programs” as recited in claim 14. Applicants agree. However, Lazarus also fails to disclose “instructions for overwriting copied video programs in a following priority, first overwrite viewed copied video programs, then overwrite non-viewed copied video programs.” In its rejection of claim 14, the Action relies on various passages in Lazarus; however, these passages describe a scenario involving erasing program schedule data, such as “data identifying the program name, the program air time(s) and channel(s) carrying the program, data corresponding to a program’s full title (‘Long Title’) and a summary description of the program’s content (‘Information Record’)” [Lazarus, Col. 5, lines 27-32], not “instructions for overwriting copied video programs in a following priority, first overwrite viewed copied video programs, then overwrite non-viewed copied video programs.”

The Examiner cited as motivation to modify the combination of Herz, Yoshinobu, and Alexander with Lazarus as “for the benefit of freeing storage space when the capacity is reached.” However, Lazarus teaches freeing program schedule data, the schedule data stored in variables [see Lazarus, Col. 5, line 54 to Lazarus, col. 7, line 8,] not deleting any sort of copied video programs. It is not clear that the combination of Herz, Yoshinobu, and Alexander store such information and so could even delete it if they tried, but it is decidedly clear that teaching deleting program schedule variables does not motivate one to delete an entirely different sort of data in an entirely different format. Thus, in Lazarus, not only is there is no motivation for “instructions for overwriting copied video programs in a following priority, first overwrite viewed copied video programs, then overwrite non-viewed copied video programs,” but Lazarus actively teaches against it, as video programs are neither captured nor saved.

For at least these reasons, the rejection is improper, and claim 14 is allowable. Such action is respectfully requested.

***Claims 15-19***

Additionally, claims 15-19 depend from claim 14. Since they depend from claim 14, they should be allowed for at least the reasons stated for claim 14. In view of the foregoing discussion of claim 14, the merits of the separate patentability of dependent claims 15-19 are not belabored at this time. Claims 15-19 should be allowable. Such action is respectfully requested.


**Conclusion**

The claims in their present form should now be allowable. Such action is respectfully requested. The Office is respectfully reminded of the above "Formal Interview Request." The request is being submitted under MPEP § 713.01, which indicates that an interview may be arranged in advance by a written request.

Respectfully submitted,

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